

Economic  
Community of West  
African States



Communauté  
Economique des Etats  
de l'Afrique de l'Ouest

ECOWAS REGIONAL COMPETITION AUTHORITY

**MANUAL OF PROCEDURES FOR IMPLEMENTING THE  
LENIENCY AND IMMUNITY PROGRAMME**

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## **Article 1: Definitions**

For the purposes of this Manual:

- (a) "CCR" is the Supplementary Act A/SA.01/12/08 adopting the Community Competition Rules and its Application Modalities;
- (b) "Days" refers to Calendar days including Saturdays and Sundays;
- (c) "ED" is the Executive Director of ERCA;
- (d) "ERCA Council" is the Council of the ECOWAS Regional Competition Authority;
- (e) "ERCA's Rules of Procedure" refers to Regulation C/REG. 24/12/21 on the ERCA's Rules of Procedure in Competition Matters;
- (f) "Immunity" means that ERCA may waive the imposition of a penalty on an enterprise or group of persons involved in a cartel/unlawful agreement because of its cooperation in the investigation of such practices;
- (g) "Leniency" means that a person, enterprise or group of persons involved in a cartel/illegal agreement may benefit from a reduction of any fine for disclosing information on illegal practices and agreements to ERCA; and
- (h) "The Leniency Regulation" refers to Regulation C/REG.22/12/21 on the Rules on leniency and immunity procedures in competition within ECOWAS.

## **Article 2: Objective**

This Manual describes the types of Immunity and Leniency that may be granted by the ERCA Council to enterprises which are:

- (a) engaged in anti-competitive behaviour, in particular cartels; and
- (b) who voluntarily disclose information to facilitate effective enforcement of the CCR.

## **Article 3: Legal Framework**

1. The ECOWAS Competition Framework was adopted through-

- (a) Supplementary Act A/SA.01/12/08 adopting the Community Competition Rules and the modalities of their application within ECOWAS;
- (b) Supplementary Act A/SA.02/12/08 on the establishment, functions, and operation of the ECOWAS Regional Competition Authority;

- (c) Supplementary Act A/SA.03/12/21 relating to the amendment of Supplementary Act A/SA.2/12/08 on the establishment, functions, and operation of the ECOWAS Regional Competition Authority;
  - (d) Regulation C/REG.21/12/21 on the Powers and Composition of the Council of the ECOWAS Regional Competition Authority;
  - (e) Regulation C/REG.22/12/21 on the rules on leniency and immunity procedures in competition within ECOWAS;
  - (f) Regulation C/REG.23/12/21 on the Rules of Procedures for Mergers and Acquisitions in ECOWAS; and
  - (g) Regulation C/REG.24/12/21 of the ERCA's rules of procedure in competition matters.
2. ERCA is charged with the implementation of the CCR and its functions include:
- (a) keeping under review commercial activities within the Community Market to ascertain practices which may distort the efficient operation of the market; or which may adversely affect the economic interests of consumers.
  - (b) ERCA on its own initiative or upon request may investigate conduct of businesses in the Common Market to determine whether any enterprise is engaging in any conduct which is in contravention of the CCR.

#### **Article 4: Prohibited Agreements, Decisions and Concerted Practices**

1. Article 5 of the CCR prohibits agreements between enterprises, decisions by associations of enterprises and concerted practices which may affect trade between ECOWAS Member States and the object or effect of which are or may be the prevention, restriction, distortion or elimination of competition within the ECOWAS Common Market, and in agreements which:
- (a) directly or indirectly fix purchase or selling prices, terms of sale, or any other, trading conditions;
  - (b) limits or control production, markets, technical development, or investment;
  - (c) share markets, customers, or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties; thereby placing them at a competitive disadvantage; or
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.



2. Any such prohibited agreement or decision shall be automatically void and of no legal effect in any Member State of the ECOWAS Community.

#### **Article 5: ERCA's Rules of Procedure**

1. In accordance with Regulation C/REG. 24/12/21 on the ERCA's Rules of Procedure in Competition Matters, ERCA may, either at the request of a complainant or on its own initiative conduct an investigation into violations of the CCR.
2. Where ERCA has established that there has been an infringement of the CCR, it shall recommend to the ERCA Council to consider imposing Sanctions on the enterprises or associations of enterprises concerned, in order to bring such infringement to an end.
3. The ERCA Council shall impose Financial Penalties up to 10% of the regional annual turnover of the enterprise(s) concerned that are convicted of violating the CCR.
4. The fines may also be accompanied by periodic penalty payments for failure or delay in compliance with the ERCA Council's decisions ranging from UA 300,000 to UA 750,000. The ERCA Council shall determine in its decision the date of collection and the modalities for implementation of the periodic penalty payments.

#### **Article 6: The Leniency Regulation**

1. The conditions, rules and procedures for leniency and immunity under which non- prosecution or a reduction of the applicable penalty may be granted are laid down in this Regulation.
2. ERCA may either grant total Immunity, or Leniency through reduction of fines it would have imposed on an enterprise engaged in a cartel activity in exchange for cooperation in investigation of such activities.
3. The Leniency and Immunity rules apply to an enterprise or a group of persons, which carries out profit-making or remunerative activities and is involved in the practices concerned.
4. They apply irrespective of whether the cartel/illegal agreement takes place within or outside ECOWAS, as long as the practice has an effect on the ECOWAS Common Market.

#### **Article 7: Beneficiaries**

1. The ERCA Council may grant a natural or legal person either total Immunity or Leniency from fines for participation in cartel activities within the ECOWAS Common Market.
2. Cartel activities that may benefit from the Immunity or Leniency regulation include:
  - (a) price fixing of either sale or purchase prices including resale price maintenance;

- (b) bid-rigging;
  - (c) output restrictions; and
  - (d) allocation of quotas or sharing of markets within the Region.
3. The following are excluded from the benefit of Immunity or Leniency:
- (a) employee or group of employees in the service of an enterprise who instigated or coerced others to participate in the cartel activity; and
  - (b) any person or enterprise whose disclosure was not made spontaneously.
4. Leniency or Immunity does not absolve the applicant from other consequences of the infringement of the CCR including:
- (a) void agreements;
  - (b) the possibility of the award of compensation by ERCA to third parties affected by the cartel activity;
  - (c) the possibility that third parties who have suffered harm from the cartel activity may have a claim under a private right of action; and
  - (d) any penalty that may be imposed by other competition authorities outside the ECOWAS Region.

#### **Article 8: General Conditions for Immunity or Leniency**

1. To benefit from immunity or leniency, all applicants must -
- (a) not have instigated, or coerced other enterprises to participate in the cartel activity;
  - (b) accept that they have infringed the CCR by participating in cartel activity;
  - (c) refrain from any further involvement or participation in the cartel activity from the time of disclosure or the date of the application, unless directed otherwise by ERCA to facilitate its investigation.
  - (d) maintain full continuous and total collaboration with ERCA throughout the investigation until conclusion of any actions ERCA may deem appropriate.
  - (e) provide all relevant information and evidence in the possession or control of the Applicant to ERCA expeditiously;
  - (f) respond to enquiries and requests which ERCA believes may contribute to the establishment of relevant facts without delay;
  - (g) grant access to current and, where possible, former employees and Directors of the enterprise for purposes of the investigations and interviews as and when required;



- (h) not destroy, falsify or conceal information or evidence; and
  - (i) not disclose the facts or any part of the contents of the Leniency application to other cartel members or to any third party, unless explicitly authorised by ERCA.
2. All applicants for Immunity or Leniency must comply with these general conditions set out in this article 8 and in addition to the specific requirements for Immunity and the different types of Leniency in articles 9-11 of this Manual.

#### **Article 9: Immunity from Fines**

1. The ERCA Council may grant 100% total Immunity from any fine it would have imposed in accordance with the CCR to an Applicant who is the first to come forward to provide evidence of a cartel before commencement of an investigation by ERCA.
2. The following specific conditions must be met:
  - (a) ERCA must not have sufficient information to establish the existence of the cartel at the time of application;
  - (b) the Applicant must unconditionally accept participation in the cartel activity; and
  - (c) the Applicant must provide sufficient information in accordance with ERCA Rules of Procedure. The evidence provided must include;
    - i. the name and address of the Applicant;
    - ii. detailed description of the alleged cartel, including products, goods or services provided;
    - iii. alleged cartel conduct;
    - iv. parties in the alleged cartel;
    - v. affected territory;
    - vi. duration of the alleged cartel;
    - vii. evidence of the alleged cartel, including agreements, correspondence, corporate documents; and
    - viii. details of any Leniency applications to any other NCAs within the Community.

#### **Article 10: Leniency: Up to 50% Reduction of Fines**

1. The ERCA Council may grant a reduction of up to 50% in the level of any fine it would have imposed in accordance with the CCR.

2. The following specific conditions must be met:
  - (a) the Applicant is the first to come forward after ERCA has commenced an investigation;
  - (b) the application and supporting information must be provided at an early stage of ERCA's investigation; and
  - (c) the information and evidence provided by the applicant must be of significant value which will genuinely assist in the progress of ERCA's investigation.

#### **Article 11: Leniency for cooperation up to 20% reduction in penalty**

1. ERCA may grant a reduction of up to 20% in the level of any fine it would have imposed in accordance with the CCR.
2. The following specific conditions must be met:
  - (a) ERCA must have commenced an investigation into the cartel activity;
  - (b) the Applicant is the first to come forward after commencement of the investigation; and
  - (c) the information provided by the Applicant must assist in the progress of ERCA's investigation.

#### **Article 12: Pre-Submission Enquiries**

1. An Applicant may approach ERCA anonymously for confidential guidance on any aspect of the Leniency Programme.
2. Confidential discussions will be held on a no-names basis with a view to providing as much information as possible on ERCA's processes, and evidence which may be required to support a cartel investigation.
3. Applicants requesting confidential guidance must ensure that the information provided is not false or misleading.
4. Information shared during any such discussion remain confidential to ERCA and will not constitute the basis of an application for Leniency under this Manual, unless the telephone discussion is followed-up with a written application within ten (10) days.
5. Where an Applicant determines, following the confidential discussion that they wish to make an application for Leniency, the relevant Form on ERCA's website must be used.



### **Article 13: Place Holder System**

1. Where an investigation of the cartel activity has already commenced, ERCA may provide a "Place Holder" on a case-by-case basis to secure the position of an enterprise in the queue for the different types of Leniency available.
2. ERCA will consider whether any other Applicants have applied for Leniency in relation to the same activity in determining whether a Place Holder will be granted to an Applicant.
3. ERCA may also provide a provisional Place Holder on a case-by-case basis in the event that the Applicant is unable to immediately provide all the relevant information, evidence and documents relating to the cartel activity.
4. ERCA will stipulate a deadline within which such information must be provided to confirm the Place Holder.
5. The Applicant must ensure that the relevant information, documents and evidence which meet the requirements for a grant of Leniency applied for is provided within the stipulated deadlines.
6. Where an Applicant fails to provide evidence to confirm the provisional Place Holder, that Applicant will lose its position in the queue to the next Applicant eligible to obtain a reduction in fine.
7. To obtain a Place Holder, the Applicant must provide the following information to ERCA:
  - (a) name of the enterprise engaged in cartel activity;
  - (b) description of the cartel activity;
  - (c) members or parties to the cartel;
  - (d) the market(s) in which the cartel activity occurred;
  - (e) estimated duration of the cartel.

### **Article 14: Submission of Application**

Completed applications for Immunity or Leniency must be submitted to the Registry and must include the following:

- (a) company name, full address, name and status of the Applicant;
- (b) facts of the case;
- (c) commitment to cooperate fully and sincerely with the ERCA until the conclusion of the investigation;
- (d) supporting information for the cartel activity;

- (e) where an investigation has commenced, the Applicant must supply information which will add significant value to ERCA's ongoing investigation into the cartel activity including a documentary record such as agreements, contracts, internal corporate correspondence, Minutes of meetings setting out details of the cartel activity, and the identity of past and present employees engaged in the cartel activity.

#### **Article 15: Grant of Conditional Immunity or Leniency**

1. The grant of either total Immunity or Leniency is conditional on compliance with the requirements set out in this Manual.
2. In accordance with the Leniency Regulation where ERCA considers that the conditions are met and that the application is well-founded, it will be considered in line with ERCA's investigation procedure as set out in the ERCA Investigation and Notifications Manual.
3. Where the evidence provided is sufficient, ERCA will issue a Conditional Immunity or Leniency letter to the Applicant setting out the conditions that must be complied with in course of the investigation.
4. Failure to abide by the continuing obligations set out in this Manual, in particular, continuous cooperation with ERCA may lead to revocation of the conditional Immunity or Leniency.
5. Where ERCA concludes that the evidence provided is not sufficient, it will reject the application.
6. Where the application is subsequently withdrawn or abandoned by the Applicant, ERCA would terminate the Leniency application procedure. However, ERCA may proceed with the investigation on the basis of information it has obtained in accordance with its Rules of Procedure.

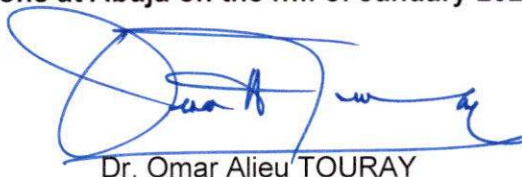
#### **Article 16: Confirmation of Grant of Conditional Immunity or Leniency by the ERCA Council**

1. The grant of the type of Immunity or Leniency shall be confirmed by the ERCA Council at conclusion of its investigation following transmission of the ERCA file by the ED to the ERCA Council.
2. The ERCA Council shall issue a Final Confirmation Notice setting out the type of Immunity or Leniency granted to the Applicant at this stage.

## **Article 17: Confidentiality and Disclosure**

1. To the extent that it is consistent with its mission, ERCA will ensure that it keeps the identity of Applicants confidential pending conclusion of its investigations and makes its recommendation to the Council on whether there has been an infringement of the CCR.
2. Subject to ERCA's rules of Procedure, material submitted by the Applicant in support of its Leniency or Immunity application will be disclosed to the parties to the cartel activity following issuance of ERCA's recommendation to the Council and during the Access to File procedure as a part of the parties' rights of defense. Where an applicant objects to such a disclosure, he will be required to identify the information, which may not be disclosed to third parties as a part of the rights of defence, access to File procedure and provide justification for such non-disclosure.
3. Where ERCA jointly undertakes investigations of cartel activity with competent authorities of ECOWAS Member States, officials of ERCA, including members of the Council, consultants and staff of the national authority are bound by professional secrecy and may not disclose any information received in course of the investigation.
4. Where ERCA discontinues its investigations without making a recommendation to the Council, information provided by the Applicant will be retained by ERCA and may be used if the investigation is subsequently re-opened. Where an investigation is re-opened the Conditional Immunity or Leniency granted to the Applicant will be revived and ERCA will notify the Applicant in writing of the re-opening of the investigation.

**Done at Abuja on the ..... of January 2024**



**Dr. Omar Alieu TOURAY**

**PRESIDENT OF THE ECOWAS COMMISSION**



## ANNEX: Application for leniency form

### INTRODUCTION

The Community Competition Rules (CCR) prohibit agreements between enterprises, decisions by associations of enterprises and concerted practices in restraint of trade within the ECOWAS Common Market. Alongside the CCR is the Leniency Regulation which protects individuals and enterprises contributing to the conduct of investigations into infringements of the CCR within the ECOWAS Community. The Leniency Regulation sets out the conditions, rules and procedures for immunity from financial penalties or reduction in the amount of financial penalty imposed by the ERCA Council.

### INSTRUCTIONS

This Form must be completed to the best of your ability and submitted to the ERCA Registry. Please attach any documents or relevant information to support your application. The information provided in this Form is confidential to the extent possible to enable ERCA consider your application. However, ERCA may disclose this information where necessary to assist in the discharge of its functions. ERCA will contact the applicant where it considers that it is necessary to disclose such information. However, for the avoidance of doubt, you have the right to identify which information you consider confidential by submitting a request for confidentiality together with this application.

#### 1. DETAILS OF APPLICANT, ENTERPRISE, OR AUTHORISED REPRESENTATIVE

Full Name(s):		Website:
Address and name of contact person:		
Phone:		Email:
Description of Industry		

If this application is being submitted jointly with other natural and/or legal person(s), please indicate and provide full details of the other applicants.

Where this Form is completed by an Authorised Representative, please state the nature of your relationship with the beneficiary and whether you have the legal mandate to represent the beneficiary.

## 2. FACTS OF THE CASE

- (a) Please state the facts in support of the existence of the cartel, for example information about an agreement or concerted practice. (Include details of the businesses and persons involved in the cartel)

- (b) Indicate the industry and the Community Member States in which the cartel is operating.

- (c) Details of the company(ies) and person(s) involved.

- (d) Describe the activities of the cartel (this may include price fixing either directly or indirectly, market sharing, bid rigging and collusion to submit bids, coordination or limiting production etc.) Provide as much details as possible of the activities of the cartel.

- (e) Please indicate whether the cartel is still active.

- (f) Provide any other information or comments that you may have in relation to the cartel.

### **3. REASONS FOR APPLICATION FOR LENIENCY**

Please explain why you are applying for Leniency.

### **4. PROCEEDINGS BEFORE NATIONAL COMPETITION AUTHORITIES**

- (a) Please indicate whether you have approached any other National or Regional Competition Authority in relation to the same agreement, decision or practice.

- (b) Please indicate whether any other National or Regional Competition Authority has been notified about your application to ERCA.



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## 5. SWORN DECLARATION

I ..... declare that the information in this Application Form and all supporting documents I have attached are accurate and provided to ERCA in good faith. I am aware that it is an offence to provide false or misleading information to ERCA and that I am committed to cooperate fully and sincerely with ERCA until the conclusion of the investigation.

**Print Name:**

**Position:**

**Signature:**

**Date:**

<b>OFFICIAL USE ONLY</b>	
<b>ERCA REGISTRY</b>	
<b>Received By</b>	
Print Name:	Signature:
Date Received:	Case Reference Number:
Acknowledgement letter issued:	Date Issued:
<b>ERCA REGISTRAR</b>	
Print Name:	Signature: